



State of Washington  
REPORT OF EXAMINATION  
FOR WATER RIGHT APPLICATION

WR File NR: S4-34941  
WR Doc ID: 4184629

<b>PRIORITY DATE</b> April 8, 2004	<b>WATER RIGHT NUMBER</b> S4-34941
<b>MAILING ADDRESS</b> Bumping Lake Summer Homes C/O Ralph Berthon PO Box 2361 Yakima, Washington 98907	

**Quantity Authorized for Withdrawal or Diversion**

DIVERSION RATE	UNITS	ANNUAL QUANTITY (AC-FT/YR)
0.11	CFS	0.35

**Purpose**

PURPOSE	WITHDRAWAL OR DIVERSION RATE		ANNUAL QUANTITY (AC-FT/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE
Group Domestic (Indoor Use)	0.11		CFS	0.35	Continuously

**Source Location**

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Yakima	Unnamed Creek	Bumping Lake	38-Naches

SOURCE FACILITY/DEVICE	PARCEL	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Point of Diversion	12162299992	16N	12E	22	NESW	46°51'39.60"N	121°19'7.20"W

Datum: WGS84

**Place of Use (See Map: Attachment 1)**

PARCEL
12162211001, 12162211002, 12162211003, 12162211004, 12162211005, 12162211006, 12162211007, 12162211009, 12162211010, 12162211012, 12162211013.

**LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE**

Bumping Lake Summer Homes, Tract Nos. 1, 4-9, 11, 12, 14, and 15 all within the SW¼ of un-surveyed Section 22, T. 16 N., R. 12 E.W.M., Snoqualmie National Forest.

### Proposed Works

Several small surface water diversions are located within close proximity on a small unnamed tributary to Bumping Lake. Water is diverted and conveyed to the cabin community through one of four main distribution lines. Water which is not consumptively used is either discharged via overflow, or to an individual on-site septic system.

### Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Complete	Complete	January 1, 2019

### Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Annually (Jan 31)
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

### Provisions

#### Mitigation

The Department of Ecology has assigned an equivalent amount of consumptive use from its portfolio of water rights held in trust to mitigate for impacts from this project. You shall pay to the Department of Ecology the invoiced sum which recovers Ecology's costs for acquiring the water rights and making them available to you, and for storage and delivery of mitigation water under paragraph 15(a) of the United States Bureau of Reclamation-Ecology Water Storage and Exchange Contract No. 09XX101700 dated January 29, 2009.

During periods of water shortage, priority calls against one or more of the source trust water rights used for mitigation for this project may be made by a third party. If that priority call for water is found to be valid, water use under this authorization may be temporary curtailed until the priority call for water ends.

#### Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data shall be submitted via the Internet. To set up an Internet reporting account, contact the Central Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Central Regional Office for forms to submit your water use data.

### **Easement and Right-of-Way**

The water source and/or water transmission facilities are not wholly located upon land owned by the applicant. Issuance of a water right authorization by this department does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtaining such a right is a private matter between applicant and owner of that land.

### **Proof of Appropriation**

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

### **Schedule and Inspections**

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

### **Findings of Facts**

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S4-34941, subject to existing rights and the provisions specified above.

### **YOUR RIGHT TO APPEAL**

You have a right to appeal this Decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Decision. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

## ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW, Suite 301 Tumwater WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

Signed at Yakima, Washington, this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Mark Kemner, LHG, Section Manager  
Water Resources Program/CRO  
Department of Ecology

*If you need this document in a format for the visually impaired, call the Water Resources Program at 509-575-2490. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.*

---

## INVESTIGATOR'S REPORT

---

### BACKGROUND

#### Project Description

On April 8, 2004, Thomas R. and Anna L. Martinson filed Application No. S4-34941 with the Washington State Department of Ecology (Ecology) requesting an appropriation of public surface water. The application was later amended to include Ray Akers, then the entire Bumping Lake Summer Homes community. The applicant proposes to divert an instantaneous rate ( $Q_i$ ) of 0.11 cubic-feet per second (cfs) and a cumulative annual diversion volume ( $Q_a$ ) of 0.35 acre-feet per year (ac-ft/yr). The purpose of use is for group domestic (indoor only) supply year round, as needed.

The subject application qualifies for Ecology's Cabin Owner Mitigation Program. As directed by Senate Bill 6861, Ecology is providing water banking opportunities for Yakima Basin Cabin Owners with junior claims (post-1905) to purchase senior mitigation credits to offset the consumptive use of water during years of rationing by the US Bureau of Reclamation. Also, subject to application-specific suitability criteria, mitigation may be used to issue new water budget neutral water rights.

Consumptive use will be mitigated through purchase of mitigation credits from Ecology's Cabin Owner Mitigation Program (Trust Water Right Nos. CS4-00195CTCL(A)sb6, CS4-00195CTCL(B)sb6, and CS4-500195CTCL(C)sb6) – collectively known as Bruton Ditch. The application is therefore water budget neutral with respect to Total Water Supply Available (TWSA). Out-of-season and/or carry over impacts to instream flows will be managed with use of Water Storage and Exchange Contract No. 09XX101700 between Ecology and the United States Bureau of Reclamation.

**Table 1:** Summary of Application No. S4-34941

<i>Attributes</i>	<i>Proposed</i>
Applicant	Bumping Lake Summer Homes
Application Received	April 8, 2004
Instantaneous Quantity	0.11 cubic-feet per second (csf)
Source	Unnamed Creek
Point of Diversion	NE¼SW¼, Section 22, T. 16 N., R. 12 E.W.M.
Purpose of Use	Group Domestic (indoor only)
Period of Use	Year round
Place of Use	Bumping Lake Summer Homes

## Legal Requirements for Application Processing

The following requirements must be met prior to processing a water right application:

- **Public Notice**

Notice of the proposed appropriation was published in The Yakima Herald of Yakima, Washington, on October 24 and 31, 2013. No comments were received during the 30-day comment period.

- **State Environmental Policy Act (SEPA)**

The subject application is categorically exempt under SEPA (WAC 197-11-305 and WAC 197-11-800(4)) because the instantaneous quantity is less than the 1.0 cfs threshold.

- **Water Resources Statutes and Case Law**

RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Rights Program (TWRP) in the Yakima River basin for water banking purposes. RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44 or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users. RCW 90.42.100(2)(b) states that water banking may be used to document water right transfers to and from the TWRP.

- **Expedited Processing**

This application qualifies for expedited processing under WAC 173-152-050(2)(d) which would result in providing for public water supplies. Based on the provisions of RCW 43.21A.690 and RCW 90.03.265, this application has been processed by Aspect Consulting, LLC (Aspect Consulting) under Ecology Cost-Reimbursement Assignment No. ASP018 (Master Contract No. C1000185).

## INVESTIGATION

In consideration of this application, Aspect Consulting reviewed available documents pertaining to the historic use of water, site conditions, and the potential effect on existing water rights. This included information submitted by the applicant and pertinent Ecology records including adjudication and water rights records and water resource policy and guidance documents.

A site visit was completed on July 15, 2013. Kelsey Collins (Ecology) and Tyson Carlson (Aspect Consulting) visited with each available cabin owner to inspect the point of diversion, place of use, and answer questions regarding estimates of total or consumptive use.

This project was presented at the Water Transfer Working Group (WTWG) on August 5, 2013. This group represents private, federal, state and tribal groups interested in water right changes in the Yakima Basin. There were no objections to the cabins on Bumping Lake receiving surface water permits mitigated by a senior water right from Taneum Creek, as long as the consumptive use quantity needed for mitigation is assigned to Water Storage and Exchange Contract No. 09XX101700 between Ecology and the USBR.

In addition, Ecology has sought consultation with Reclamation who controls all remaining un-appropriated waters of the Yakima River – including all tributaries and groundwater in continuity. Reclamation subsequently granted a release of water for the subject application via email received on February 10, 2014.

### **Site Description**

The proposed point of diversion is located approximately 1,200 feet updrainage of the cabin community, in the northeast quarter of the southwest quarter of Section 22, in Township 16 N., Range 12 East of the Willamette Meridian (E.W.M.), in the Naches Water Resource Inventory Area (WRIA 38).

The point of diversion consists of several small surface water diversions located within close proximity on the unnamed tributary to Bumping Lake. Water is diverted and conveyed to the cabin community through one of four small diameter distribution lines. Water which is not consumptively used is either discharged via overflow, or to an individual on-site septic system.

Three cabins within the Bumping Lake Summer Homes community are supported by post-1905 claims. These include Adjudication Court Claim Nos. 00164 (Mayjut; Tract No. 16), 02199 (Kendig; Tract No. 10), and 02276 (USFS; Tract No. 16). In addition, one cabin (Tract No. 17) is supported by Court Claim No. 02276 which has a May 10, 1905 priority date and is subject to only curtailment during rationing years.

### **Domestic Water Use**

Senate Bill 6861 directed Ecology to facilitate the purchase of senior mitigation credits to offset the consumptive use of out-of-priority or unpermitted water use. In response, Ecology (2006) completed a survey to identify the number of water users that rely on surface water, how they use water (in-house and/or outside irrigation), and how much water they use. Ecology received 285 completed surveys from water users with and without water rights. Ecology estimated the group's annual water use by multiplying the gallon per day identified on the survey by the number of days the cabin was occupied. In cases where a water duty was not provided, Ecology used criteria developed for mitigation during the 2005 drought and/or procedures outlined in the Washington State Department of Health (2009) Water System Design Manual.

Based on the available data, Ecology determined that the average seasonal recreational cabin uses approximately 100 gallons per day (gpd) or about 0.03 ac-ft/yr for occupancy up to 105 days per year. For consistency, Ecology has assumed the same consumptive use defined by rule (WAC 173-539(A)-050(3)) in upper Kittitas County as 30 percent of total use (Qa), or 0.01 ac-ft/yr per cabin. Therefore, for the 11 unpermitted cabins in the Bumping Lake Summer Homes community, 0.11 ac-ft/yr will be required to fully mitigate a new water right.

Based on this rationale, estimated total and consumptive use quantities by month are summarized in Table 2. Because most cabins are rustic and use very little water, and few are occupied year-round, the numbers are considered to be a liberal estimate of actual use.

**Table 2:** Schedule of Estimated Total and Consumptive Use.

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
<b>Total Use (acre-feet)</b>	0.030	0.027	0.030	0.029	0.030	0.029	0.030	0.030	0.029	0.030	0.029	0.030	<b>0.35</b>
<b>Consumptive Use (acre-feet)</b>	0.009	0.008	0.009	0.009	0.009	0.009	0.009	0.009	0.009	0.009	0.009	0.009	<b>0.11</b>

Any new surface water appropriation in the Yakima Basin will result in a temporary permit being issued by Ecology until the Yakima Superior Court Adjudication is complete.

#### **Four Statutory Tests**

This Report of Examination (ROE) evaluates the application based on the information presented above and in referenced documents. To approve the application, Ecology must issue written findings of fact and determine that each of the following four requirements of RCW 90.03.290 has been satisfied:

1. The proposed appropriation is a beneficial use;
2. Water is available for appropriation;
3. The proposed appropriation would not impair existing water rights; and
4. The proposed appropriation would not be detrimental to the public welfare.

#### **Beneficial Use**

In accordance with RCW 90.54.020(1), the proposed appropriation for group domestic indoor use is a beneficial use of water. As detailed on the Application for Permit and observed during the site visit, the point of diversion is supported by the necessary infrastructure to deliver the full appropriation of water to the cabin community.

#### **Availability**

The small unnamed tributary has provided the cabin community's water supply for up to 50 years. The diversion is the only one located along the entire length of the tributary before discharging directly to Bumping Lake.

The appropriation proposed under the subject application will be water budget neutral by dedicating 0.11 ac-ft/yr of consumptive use available from Ecology's Cabin Owner Mitigation Program. Month-by-month mitigation is offered to account for the project's indoor only use during the irrigation season (April 1 – October 31). Out-of-season (November 1 – March 31) use and/or potential carry over impacts to instream flows will be mitigated through the USBR-Ecology Water Storage and Exchange Contract.

#### **Potential for Impairment**

RCW 90.03.290 and RCW 90.44.060 require a determination that a new appropriation will not impair existing rights. There are no water right certificates, permits, or claims between the proposed point of diversion and Bumping Lake. Furthermore, Bumping Lake is a proportional massive water body which will not be affected by the proposed appropriation.

Bumping Lake is a migratory barrier to anadromous salmonids (Bumping Lake Dam has no fish passage facilities), and the unnamed tributaries are too small and steep to provide habitat for anadromous



salmonids (Reclamation 2005). In addition, Washington Department of Fish and Wildlife (WDFW) fish distribution data indicate no occurrence of Bull Trout or other Endangered Species Act (ESA)-listed fish.

Therefore, no impairment to existing rights or to local habitat will occur. Assignment of 0.11 acre-feet is appropriate, given that the flow reduction resulting from this permitted use is below the consultation threshold in paragraph 18(b) of the USBR-Ecology contract.

### **Public Welfare**

The proposed appropriation will provide authorization for domestic supply to the rural cabin community, and is not detrimental to the public interest as provisioned.

### **CITATIONS**

Ecology 2006. 2006 Report to the Legislature, Potential Water Solution for Domestic Surface Water Users, Yakima Basin Camps & Cabin Owners. Publication No. 06-11-044. December 2006.

Reclamation, 2005. Phase I Assessment Report, Storage Dam Fish Passage Study, Yakima Project, Washington. Revised April 2005

WDFW. SalmonScape. <http://wdfw.wa.gov/mapping/salmonscape/index.html>.

## CONCLUSIONS

The conclusions based on the above investigation are as follow:

1. The proposed appropriation for group domestic use (indoor only) is a beneficial use of water;
2. The quantity of water requested is made available by purchase of mitigation credits;
3. The proposed appropriation will not impair senior water rights or local habitat; and
4. The proposed appropriation will not be detrimental to the public interest.

## RECOMMENDATION

Based on the information presented above, the author recommends that a temporary permit be authorized (until the Yakima Superior Court Adjudication is complete) to appropriate surface water in the amounts described, limited, and provisioned on page 1 through 3 of this report.

### Purpose of Use and Authorized Quantities

0.11 cfs, 0.35 ac-ft/yr for continuous group domestic use.

### Point of Diversion

NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 22, T. 16 N., R. 12 E.W.M.

### Place of Use

Bumping Lake Summer Homes, Tract Nos. 1, 4-9, 11, 12, 14, and 15 all within the SW $\frac{1}{4}$  of unsurveyed Section 22, T. 16 N., R. 12 E.W.M., Snoqualmie National Forest.

Report by:

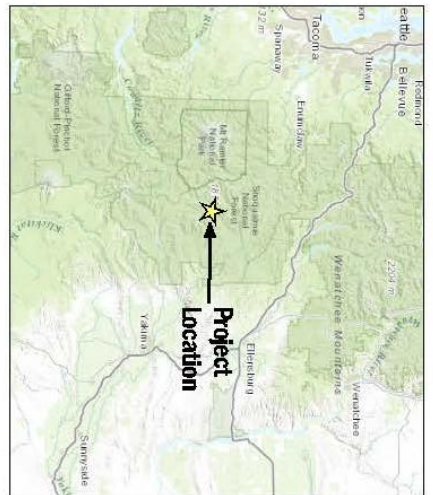
\_\_\_\_\_  
Tyson D. Carlson, LHG, Aspect Consulting, LLC

\_\_\_\_\_  
Date

Reviewed by:

\_\_\_\_\_  
Kelsey S. Collins, Water Resources Program

\_\_\_\_\_  
Date



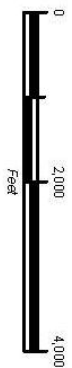
**Comments:** Place of use and point of diversion are defined on the cover sheet under the heading "LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED."

**LEGEND**

Place of Use:

- Place of Use
- Authorized Point of Diversion

- Local Road
- Tax Parcel
- Township/Range
- Sections



<b>No. S4-34941</b>		
Bumping Lake Summer Homes Ecology Cabin Owner Mitigation Program		
T16N/R12E - Section 22		
Yakima County, Washington		
<b>Aspect CONSULTING</b>	January, 2014	ATTACHMENT NO. 1
PROJECT NO. 080180	DATE BY TDC / BAH	